

AMENDED IN ASSEMBLY MARCH 27, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2260

Introduced by Assembly Member Negrete McLeod

February 22, 2006

An act to amend Sections 2111~~and 2113~~, 2113, 2168, 2168.1, 2168.2, and 2168.5 of, and to add Section 2220.7 to, the Business and Professions Code, relating to physicians and surgeons, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2260, as amended, Negrete McLeod. Approvals and certificates of registration: *special faculty permits*.

(1) Existing law, the Medical Practice Act, prohibits the practice of medicine without a ~~physician~~ *physician's* and surgeon's certificate issued by the Medical Board of California through its Division of Licensing. The act, however, authorizes a foreign physician who seeks postgraduate study in an approved medical school to apply to the division for approval to participate in the school's professional activities. Under the act, a foreign physician may apply to the division for 2 extensions of the approval granted to him or her. The act also authorizes a person who does not immediately qualify for a ~~physician~~ *physician's* and surgeon's certificate and has been offered a medical school faculty position to apply to the division for a certificate of registration to engage in the practice of medicine. Under the act, a certificate of registration may be renewed for a total period of 5 years, and renewal may be denied if the registrant is a graduate of a foreign medical school, as specified. The act directs the deposit of all revenue collected by the board into the Contingent Fund of the Medical Board

of California, where funds other than penalty revenue are continuously appropriated.

This bill would revise the renewal provisions for approvals granted to foreign physicians, limiting the duration of those approvals to 3 years, and would also revise the renewal provisions for certificates of registration, allowing 2 renewals and an additional extension, at the division's discretion, upon a showing of continued progress towards obtaining a physician and surgeon's certificate *licensure* and issuance of a certificate by the Educational Commission for Foreign Medical Graduates for graduates of foreign medical schools, other than those located in Canada. The bill would require additional information on the applications for approval and for certificates of registration. The bill would require a foreign physician and a registrant to provide identifying information to their patients and would prohibit a registrant from ~~charging patients~~ *billing individually or receiving compensation* for the medical services he or she provides and would prohibit the medical school from charging patients for those provided by a foreign physician. The bill would require the division to notify the medical school and the foreign physician or registrant of a complaint and would ~~authorize the Division of Medical Quality to take disciplinary action against the foreign physician or registrant, would authorize the division to terminate its approval of an appointment or a registration for any act that would be grounds for discipline if done by a licensee, and would authorize the foreign physician or registrant to appeal the termination.~~ The bill would authorize the division to charge application and renewal fees for the approval and the certificate of registration. By increasing that part of the revenue in the Contingent Fund of the Medical Board that is continuously appropriated, the bill would make an appropriation.

(2) ~~The~~ *Under existing law, any person that meets certain eligibility requirements, including, but not limited to, the requirement that the person is academically eminent, as defined, may apply for a special faculty permit which authorizes the holder to practice medicine, without a physician's and surgeon's certificate, within the medical school itself and certain affiliated institutions. Existing law authorizes the Division of Licensing to exercise its discretion in determining whether an applicant qualifies as academically eminent. Existing law also establishes procedures for application for, and renewal of, the permit, and the grounds for denial or discipline. Existing law requires the Medical Board of California to report to the Legislature, by*

December 31, 2002, on the implementation and status of the special faculty permit program.

This bill would modify the eligibility requirements by requiring that the person be academically eminent and clearly outstanding in a specific field of medicine or surgery and offered by the dean of a medical school in this state a full-time academic appointment, which there is a great need to fill. The bill would authorize the division to exercise its discretion in determining whether an applicant meets these requirements. The bill would also require the division to establish a review committee, with a specified composition, to review and make recommendations to the division regarding the applicants applying pursuant to these provisions. The bill would prohibit a medical school from appointing the holder of a special faculty permit to certain positions without authorization from the division. The bill would require the board to report to the Legislature, by December 31, 2011, on the status of the special faculty permit program.

(3) Under existing law, the board through its Division of Medical Quality may take disciplinary action against a physician and surgeon for violating the Medical Practice Act. The act also makes a violation of its regulatory provisions a crime.

This bill would prohibit a physician and surgeon from including certain provisions in an agreement to settle a civil dispute arising from his or her practice that interferes with communications, as specified, between the board and another party to the dispute. The bill would make the violation of this requirement subject to disciplinary action by the board and because it would also be punishable as a crime, the bill would impose a state-mandated local program.

(3)

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 2111 of the Business and Professions Code is amended to read:

2111. (a) Physicians who are not citizens but who meet the requirements of subdivision (b), are legally admitted to the United States, and who seek postgraduate study in an approved medical school may, after receipt of an appointment from the dean of the California medical school and application to and approval by the Division of Licensing, be permitted to participate in the professional activities of the department *or division* in the medical school to which they are appointed. The physician shall be under the ~~direct supervision~~ *direction* of the head of the department to which he or she is appointed, ~~and shall be supervised by the staff of the medical school's medical center;~~ and known for these purposes as a "visiting fellow." The visiting fellow shall wear a visible name tag containing the title "visiting fellow" when he or she provides ~~medical~~ *clinical* services.

(b) (1) Application for approval shall be made on a form prescribed by the division and shall be accompanied by a fee ~~in an amount~~ fixed by the division *in an amount necessary to recover the actual application processing costs of the program*. The application shall show that the person does not immediately qualify for a ~~physician~~ *physician's* and surgeon's certificate under this chapter and that the person has completed at least three years of postgraduate basic residency requirements. The application shall ~~also describe the recruitment efforts made~~ *include a written statement of the recruitment procedures followed* by the medical school before offering the appointment to the applicant.

(2) Approval shall be granted only for appointment to one medical school, and no physician shall be granted more than one approval for the same period of time.

(3) Approval may be granted for a maximum of three years and shall be renewed annually. ~~The visiting fellow shall submit a request for renewal to the division on a form it prescribes and shall include a renewal fee in an amount fixed by the division.~~ *The medical school shall submit a request for renewal on a form prescribed by the division, which shall be accompanied by a*

1 *renewal fee fixed by the division in a amount necessary to*
2 *recover the actual application processing costs of the program.*

3 (c) Except to the extent authorized by this section, the visiting
4 fellow may not engage in the practice of medicine. Neither the
5 visiting fellow nor the medical school may assess any charge for
6 the medical services provided by the visiting fellow, and the
7 visiting fellow may not receive *any other* compensation therefor.

8 (d) The time spent under appointment in a medical school
9 pursuant to this section may not be used to meet the requirements
10 for licensure under Section 2102.

11 (e) The division shall notify *both* the visiting fellow and the
12 dean of the appointing medical school of ~~a~~ *any* complaint made
13 about the visiting fellow. ~~The Division of Medical Quality may~~
14 ~~take action against a visiting fellow as provided in this chapter.~~

15 (f) ~~The amount of the fees fixed by the division pursuant to~~
16 ~~this section shall not exceed its cost in administering the approval~~
17 ~~program.~~

18 ~~(g) The division may terminate its approval of an appointment~~
19 ~~for any act that would be grounds for discipline if done by a~~
20 ~~licensee. The division shall provide both the visiting fellow and~~
21 ~~the dean of the medical school with a written notice of~~
22 ~~termination including the basis for that termination. The visiting~~
23 ~~fellow may, within 30 days after the date of the notice of~~
24 ~~termination, file a written appeal to the division. The appeal~~
25 ~~shall include any documentation the visiting fellow wishes to~~
26 ~~present to the division.~~

27 (f) Nothing in this section shall preclude any United States
28 citizen who has received his or her medical degree from a
29 medical school ~~recognized by the division that is~~ located in a
30 foreign country *and recognized by the division* from participating
31 in any program established pursuant to this section.

32 SEC. 2. Section 2113 of the Business and Professions Code is
33 amended to read:

34 2113. (a) Any person who does not immediately qualify for
35 ~~a physician~~ *physician's* and surgeon's certificate under this
36 chapter and who is offered by the dean of an approved medical
37 school in this state a full-time faculty position may, after
38 application to and approval by the Division of Licensing, be
39 granted a certificate of registration. ~~A clinical fellowship shall~~
40 ~~not qualify a person to apply for a certificate of registration. to~~

engage in the practice of medicine only to the extent that the practice is incident to and a necessary part of his or her duties as approved by the division in connection with the faculty position. A certificate of registration does not authorize a registrant to admit patients to a nursing or a skilled or assisted living facility unless that living facility is formally affiliated with the sponsoring medical school. A clinical fellowship shall not be submitted as a faculty service appointment.

(b) Application for a certificate shall be made on a form prescribed by the division and shall be accompanied by a registration fee fixed by the division in a amount necessary to cover the actual application processing costs of the program .To qualify for the certificate, an applicant shall ~~submit an application to the division in a form it prescribes along with a registration fee in an amount fixed by the division. The applicant shall include with his or her application the following information:~~ submit all of the following:

(1) Documentary evidence satisfactory to the division that the applicant is a United States citizen or is legally admitted to the United States.

(2) If the applicant is a graduate of a medical school other than in the United States or Canada, documentary evidence satisfactory to the division that he or she has been licensed to practice medicine and surgery for not less than four years in another state or country whose requirements for licensure are satisfactory to the division, or has been engaged in the practice of medicine in the United States for at least four years in approved facilities, or has completed a combination of that licensure and training.

(3) If the applicant is a graduate of an approved medical school in the United States or Canada, documentary evidence that he or she has completed a resident course of professional instruction as required in Section 2089.

(4) Written certification by the head of the department ~~where the applicant will be appointed of the following matters: in which the applicant is to be appointed of all of the following:~~

(A) The applicant will be under his or her direction.

(B) The applicant will not be permitted to practice medicine unless incident to and a necessary part of his or her duties as approved by the division in subdivision-(f) (a).

1 (C) The applicant will be ~~under the direct supervision of the~~
2 *accountable to the medical school's department chair or division*
3 *chief* for the speciality in which the applicant will practice.

4 (D) The applicant will be proctored in the same manner as
5 other new faculty members, including, *as appropriate*, review by
6 the medical staff of the school's medical center.

7 (E) The applicant will not be appointed to a supervisory
8 position at the level of a *medical school* department chair or
9 division chief.

10 (5) Demonstration by the dean of the medical school that the
11 applicant has the requisite qualifications to assume the position to
12 which he or she is to be appointed and ~~a description of the~~
13 ~~recruitment efforts made by the medical school that shall include~~
14 *a written statement of the recruitment procedures followed by the*
15 *medical school* before offering the faculty position to the
16 applicant.

17 (c) A certificate of registration shall be issued only for a
18 faculty position at one approved medical school, and no person
19 shall be issued more than one certificate of registration for the
20 same period of time.

21 (d) (1) A certificate of registration is valid for one year ~~after~~
22 *from* its date of issuance and may be renewed twice.

23 A request for renewal shall be submitted on a form prescribed
24 by the division ~~with a renewal fee in an amount and shall be~~
25 *accompanied by a renewal fee* fixed by the division *in an amount*
26 *necessary to recover the actual application processing costs of*
27 *the program*.

28 (2) ~~If the registrant has not completed the prerequisites for the~~
29 ~~physician and surgeon's certificate, the dean of the medical~~
30 ~~school may submit a plan to the division before the term of the~~
31 ~~second renewal of the registrant's certificate expires, that~~
32 ~~demonstrates the registrant's continued progress toward~~
33 ~~satisfying those prerequisites and the issuance of a certificate by~~
34 ~~the Educational Commission for Foreign Medical Graduates, if~~
35 ~~the registrant is a graduate of a medical school located in a~~
36 ~~country other than the United States or Canada. The division~~
37 ~~may, in its discretion, extend the certificate of registration for a~~
38 ~~two-year period to allow the registrant to obtain a physician and~~
39 ~~surgeon's certificate.~~

(2) *The dean of the medical school may request renewal of the registration by submitting a plan at the beginning of the third year of the registrant's appointment demonstrating the registrant's continued progress toward licensure and, if the registrant is a graduate of a medical school other than in the United States or Canada, that the registrant has been issued a certificate by the Educational Commission for Foreign Medical Graduates. The division may, in its discretion, extend the registration for a two-year period to facilitate the registrant's completion of the licensure process.*

(e) If the registrant is a graduate of a medical school other than in the United States or Canada, he or she shall meet the requirements of Section 2102 or 2135, as appropriate, in order to obtain a ~~physician~~ *physician's* and surgeon's certificate. Notwithstanding any other provision of law, the division may accept *clinical* practice in an appointment pursuant to this section as qualifying time to meet the postgraduate training requirements in Section 2102, and may, in its discretion, waive the examination and the Educational Commission for Foreign Medical Graduates certification requirements specified in Section 2102 in the event the registrant applies for a ~~physician~~ *physician's* and surgeon's certificate. As a condition to waiving any examination or the Educational Commission for Foreign Medical Graduates certification requirement, the division in its discretion, may require an applicant to pass the clinical competency examination referred to in subdivision (d) of Section 2135. The division shall not waive any examination for an applicant who has not completed at least one year in the faculty position.

~~(f) The registrant may engage in the practice of medicine only to the extent that the practice is incident to, and a necessary part of, his or her duties as approved by the division in connection with the faculty position. The registrant shall not admit a patient to a nursing facility or a skilled or assisted living facility that is not formally affiliated with the medical school where he or she is a faculty member. The registrant shall not assess a charge for the medical services he or she provides for a patient or receive compensation therefor~~

(f) *Except to the extent authorized by this section, the registrant shall not engage in the practice of medicine, bill*

1 *individually for medical services provided by the registrant, or*
2 *receive compensation therefor, unless he or she is issued a*
3 *physician's and surgeon's certificate.*

4 (g) ~~The~~ *When providing clinical services, the registrant shall*
5 *wear a visible name tag while providing medical services*
6 *containing the title "visiting professor" or "visiting faculty*
7 *member" and member," as appropriate, and the institution at*
8 *which the services are provided shall obtain a signed statement*
9 *from each patient he or she treats, to whom the registrant*
10 *provides services acknowledging that the patient understands*
11 *that the services are provided by a person who does not hold a*
12 ~~physician~~ *physician's and surgeon's certificate but who is*
13 *qualified to participate in a special program as a visiting*
14 *professor or faculty member.*

15 (h) The division shall notify *both* the registrant and the dean of
16 the medical school of a complaint made about the registrant. The
17 ~~Division of Medical Quality may take action against a registrant~~
18 ~~as provided in this chapter.~~

19 (i) ~~The amount of the fees fixed by the division pursuant to~~
20 ~~this section shall not exceed its costs in administering the~~
21 ~~registration program.~~ *division may terminate a registration for*
22 *any act that would be grounds for discipline if done by a*
23 *licensee. The division shall provide both the registrant and the*
24 *dean of the medical school with written notice of the termination*
25 *and the basis for that termination. The registrant may, within 30*
26 *days after the date of the notice of termination, file a written*
27 *appeal to the division. The appeal shall include any*
28 *documentation the registrant wishes to present to the division.*

29 SEC. 3. *Section 2168 of the Business and Professions Code is*
30 *amended to read:*

31 2168. (a) A special faculty permit authorizes the holder to
32 practice medicine only within the medical school itself and any
33 affiliated institution in which the permitholder is providing
34 instruction as part of the medical school's educational program
35 and for which the medical school has assumed direct
36 responsibility. The holder of a special faculty permit shall not
37 engage in the practice of medicine except as provided above.

38 (b) Time spent in a faculty position under a special faculty
39 permit shall not be counted toward the postgraduate training
40 required for licensure and shall not qualify the holder of the

1 permit for waiver of any written examination required for
2 licensure.

3 *(c) The medical school shall not appoint the holder of a*
4 *special faculty permit to a position as a division chief or head of*
5 *a department without express written authorization from the*
6 *division.*

7 *SEC. 4. Section 2168.1 of the Business and Professions Code*
8 *is amended to read:*

9 2168.1. (a) Any person who meets all of the following
10 eligibility requirements may apply for a special faculty permit:

11 (1) *Is academically eminent and is clearly outstanding in a*
12 *specific field of medicine or surgery and has been offered by the*
13 *dean of a medical school in this state a full-time academic*
14 *appointment, which there is a great need to fill.* For purposes of
15 this article, “academically eminent” means the applicant holds or
16 has been offered a full-time appointment at the level of full
17 professor in a tenure track position, or its equivalent, at a
18 California medical school approved by the Division of Licensing.

19 (2) Possesses a current valid license to practice medicine
20 issued by another state, country, or other jurisdiction.

21 (3) Is not subject to denial under Section 480 or any provision
22 of this chapter.

23 (4) Pays the fee prescribed for application for, and initial
24 licensure as, a physician and surgeon.

25 (5) Has not held a position under Section 2113 for a period of
26 two years or more preceding the date of the application. The
27 Division of Licensing may, in its discretion, waive this
28 requirement.

29 (b) The Division of Licensing shall exercise its discretion in
30 determining whether an applicant ~~qualifies as academically~~
31 ~~eminent~~ *satisfies the requirements of paragraph (1) of*
32 *subdivision (a).*

33 *(c) (1) The division shall establish a review committee*
34 *comprised of two members of the division, one of whom shall be*
35 *a physician and surgeon and one of whom shall be a public*
36 *member, and one representative from each of the medical*
37 *schools in California. The committee shall review and make*
38 *recommendations to the division regarding the applicants*
39 *applying pursuant to this section, including those applicants that*

1 *a medical school proposes to appoint as a division chief or head*
2 *of a department as nontenure track faculty.*

3 *(2) The representative of the medical school offering the*
4 *applicant an academic appointment shall not participate in any*
5 *vote on the recommendation to the division for that applicant.*

6 *SEC. 5. Section 2168.2 of the Business and Professions Code*
7 *is amended to read:*

8 2168.2. An application for a special faculty permit shall be
9 made on a form prescribed by the Division of Licensing and shall
10 include any information that the Division of Licensing may
11 prescribe to establish an applicant's eligibility for a permit. This
12 information shall include, but is not limited to, the following:

13 (a) A statement from the dean of the medical school at which
14 the applicant will be employed describing the applicant's
15 qualifications and justifying the dean's determination that the
16 applicant ~~is academically eminent~~ *satisfies the requirements of*
17 *paragraph (1) of subdivision (a) of Section 2168.1.*

18 (b) A statement by the dean of the medical school listing every
19 affiliated institution in which the applicant will be providing
20 instruction as part of the medical school's educational program
21 and justifying any clinical activities at each of the institutions
22 listed by the dean.

23 *SEC. 6. Section 2168.5 of the Business and Professions Code*
24 *is amended to read:*

25 2168.5. The Medical Board of California shall report to the
26 Legislature by December 31, ~~2002~~, *2011*, on the ~~implementation~~
27 ~~and status of the special faculty permit program.~~

28 ~~SEC. 3.~~

29 *SEC. 7. Section 2220.7 is added to the Business and*
30 *Professions Code, to read:*

31 2220.7. (a) A physician and surgeon shall not include or
32 permit to be included; any of the following provisions in an
33 agreement to settle a civil dispute arising from his or her practice,
34 whether the agreement is made before or after filing the action:

35 (1) A provision that prohibits another party to the dispute from
36 contacting or cooperating with the board.

37 (2) A provision that prohibits another party to the dispute from
38 filing a complaint with the board.

39 (3) A provision that requires another party to the dispute to
40 withdraw a complaint he or she has filed with the board.

1 (b) A provision described in subdivision (a) is void as against
2 public policy.

3 (c) A physician and surgeon who violates this section is
4 subject to disciplinary action by the board.

5 ~~SEC. 4.~~

6 *SEC. 8.* No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the
11 penalty for a crime or infraction, within the meaning of Section
12 17556 of the Government Code, or changes the definition of a
13 crime within the meaning of Section 6 of Article XIII B of the
14 California Constitution.